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Project Labor Agreements and Federal Contracting – MVL Case Ruling

Recent developments in federal construction contracting underscore the tension between promoting competition and encouraging collaboration with organized labor. A [U.S. Court of Federal Claims ruling](#) invalidated a 2022 executive order requiring contractors to adopt project labor agreements (PLAs) for federal projects exceeding \$35 million. This decision, rooted in the [1984 Competition in Contracting Act](#) (CICA), highlights the court's emphasis on maintaining "full and open competition" in federal procurement.

Background

Project Labor Agreements (PLAs) are pre-hire collective bargaining agreements aimed at ensuring labor stability and compliance on large-scale projects. Over the years, the use of PLAs has fluctuated based on presidential administrations. President Biden's 2022 executive order marked a departure by mandating PLAs for federal projects over \$35 million, finalized by the Federal Acquisition Regulatory (FAR) Council in 2023. The mandate was projected to impact \$13.5 billion annually in federal construction contracts.

However, the mandate faced backlash from industry groups, which argued that requiring PLAs could discourage non-union contractors from bidding, thus limiting competition. In the consolidated case led by MVL USA Inc. and other contractors, the court found the mandate inconsistent with CICA's directive for "full and open competition." Judge Ryan T. Holte noted that federal agencies' reliance solely on executive policy, without statutory backing, was "arbitrary and capricious."

Key points

1. Legal Implications for PLAs

The ruling reaffirms the need for statutory clarity and justification when imposing PLAs. NECA will continue to monitor any subsequent legislative or regulatory actions that may impact contractor eligibility or bidding requirements.

2. The Contractors' Perspectives

The case highlighted concerns from contractors about increased costs and reduced competition associated with PLAs. Many cited market research indicating that mandatory PLAs might dissuade bidders and inflate project prices.

3. Impact on Contractors

The ruling may have implications for contractors operating in both union and non-union settings. NECA encourages member contractors to review bid specifications and understand how changes in PLA requirements could affect their operations.



PLAs and Federal Contracting

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Looking ahead

1. Status quo

NECA contractors will need to critically examine changes to the status quo. Numerous markets have heavily relied on PLAs for government contracted work in recent history which will no longer be available.

2. Market assessment

Prior to the 2022 Biden Administration EO, there was not a mandate for PLAs on projects exceeding \$35M. President Obama's EO 13502 and related FAR regulations encouraged, but did not require, federal agencies to mandate PLAs on a case-by-case basis on federal construction projects totaling \$25 million or more. NECA contractors that perform federal work will need to assess current market conditions and alignment with new regulations to maintain their ability to win future projects.

3. Evolution

NECA members that have historically relied upon legislative insulation to government funded work and wish to remain in this market must prepare to rapidly evolve their business model to create a competitive advantage as soon as possible. NECA members are encouraged to remain in close communication with their NECA Chapter and IBEW Business Manager jointly on market realities and needs to remain competitive for the foreseeable future.

Conclusion

This ruling serves as a reminder of the evolving legal landscape governing PLAs and federal contracting. NECA members are encouraged to stay informed and prepared to navigate these changes, ensuring that contractors can approach federal projects with clarity and confidence.

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